

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Theodore Miller

(b) County of Residence of First Listed Plaintiff Philadelphia
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Joseph Chaiken, Esq. Joseph Chaiken & Associates, P.C., 1800 JFK Blvd., Suite 810, Philadelphia, PA 19103, 215-564-1800

DEFENDANTS

The United States of America

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	1	1	Incorporated or Principal Place of Business In This State	4	4
Citizen of Another State	2	2	Incorporated and Principal Place of Business In Another State	5	5
Citizen or Subject of a Foreign Country	3	3	Foreign Nation	6	6

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input checked="" type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Federal Tort Claims Act

Brief description of cause:

Medical Malpractice**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

\$10,000,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

05/31/2017

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

JOSEPH CHAIKEN & ASSOCIATES, P.C.
BY: Joseph Chaiken, Esquire – 31187
1800 John F. Kennedy Boulevard – Suite 810
Philadelphia, Pennsylvania 19103
(215) 564-1800
jchaiken@jchaikenlaw.com

Attorney for: Plaintiff

JURY TRIAL DEMANDED

Theodore Miller	:	IN THE UNITED STATES DISTRICT COURT
2001 Kinsey Street	:	
Philadelphia, PA 19124	:	FOR THE EASTERN DISTRICT OF PA
	:	
v.	:	
	:	
The United States of America	:	
c/o U.S. Department of Veterans Affairs	:	No.:
Office of General Counsel	:	
1010 Delafield Road	:	
Pittsburgh, PA 15215	:	
And	:	
120 Le Brun Road	:	
Buffalo, NY 14215	:	
And	:	
3900 Woodland Avenue	:	
Philadelphia, PA 19104	:	

COMPLAINT

1. Plaintiff is an individual residing at the above address.
2. Defendant is the United States of America. Plaintiff submitted a form 95 claim for Damage, Injury or Death form on January 19, 2016 alleging that his treatment was negligent while under the care of the Philadelphia VA Medical Center. On April 20, 2017 the US Department of Veterans Affairs office of regional counsel notified Plaintiff's counsel that it was denying Plaintiff's claim.
3. Plaintiff went to the VA Medical Center with blurry vision in his right eye on or about June 8, 2015. Rather than schedule Mr. Miller for an immediate appointment with an ophthalmologist, he was scheduled for tele-retinal imaging on July 7, 2015.

4. At all times material hereto, the Defendant United States was operating through the VA Medical Center which itself was acting through its employees, acting within the course and scope of their employment and authority.

5. The tele-retinal imaging showed indications of developing retinal detachment including a retina lifted, stretched and distorted. This should have been addressed immediately, and the VA staff should have made certain to have alerted Mr. Miller to this problem that needed prompt and immediate surgery/treatment to avoid a permanent retinal detachment.

6. Rather than arrange for an immediate appointment with a retinal specialist/ophthalmologist the VA medical center through its staff scheduled Mr. Miller to be seen by an ophthalmologist on October 15, 2015, more than three months later.

7. Mr. Miller continued to complain to the Veterans Administration health care staff, that his vision was blurry and was getting worse. For months the Veterans Administration Health Care Staff at the Philadelphia VA Medical Center ignored his complaints. Finally, a health technician had Mr. Miller examined on September 23, 2015. The study done on that date showed worsening of the condition of the retina. Mr. Miller then was scheduled for surgery on October 15, 2015, the same day that he had previously been scheduled for his follow up appointment several months before. However, by the date of Mr. Miller's follow up examination, it was too late to save Mr. Miller from having a permanent retinal detachment and was certainly too late to do so by the date his actual surgery took place.

8. The United States acting through the Veterans Administration Medical Center, Philadelphia VA Medical Center through its and their actual and ostensible agents, employees and staff were negligent and careless and breached the standards of care in inter alia:

- a. Failing to schedule Mr. Miller for an urgent or emergent follow up appointment with an ophthalmologist and/or a retinal specialist/ophthalmologist when he first came in with a complaint of a change in his vision; and after his tele-retinal imaging on July 7, 2015.

- b. Failing to properly read/interpret the results of the tele-retinal imaging and failing to understand their significance as showing a developing and/or potential retinal detachment;
- c. Failing to act promptly to schedule Mr. Miller for surgery/examination to avoid a retinal detachment.
- d. Failing to listen to and react to Mr. Miller's ongoing complaints which included complaints of blurry vision which was getting worse.
- e. Otherwise acting in a careless and negligent manner.

9. Due to the negligence of the defendant, through its agency and the agencies employees, agents and ostensible agents, Mr. Miller is completely blind in his right eye; he has suffered pain, anxiety and nervous shock; he has been and may in the future be prevented from attending to his usual duties and activities, and occupation and has lost potential earnings and earning capacity as a result; he underwent several surgeries on his eye; he has loss of function of the eye, and disfigurement as a result; in addition he has incurred medical bills and other expenses due to the delay in identifying and treating the potential retinal detachment. All of the above injuries and damages are or may be permanent.

Wherefore, Plaintiff, Theodore Miller claims damages from the defendant in the amount of \$10,000,000.00 or an amount sufficient to fully compensate him for his past, present and future pain and suffering, inability to enjoy the pleasures of life; disfigurement; mental distress, loss of earnings and earning capacity, medical bills and all other damages compensable pursuant to law.

JOSEPH CHAIKEN & ASSOCIATES, P.C.

By: 

JOSEPH CHAIKEN, ESQ

Date: 5/31/17

VERIFICATION

I, Theodore Wayne Miller, state that I am the Plaintiff in the foregoing action and here by verify that the facts upon which this complaint is based are true and correct to the best of my knowledge, information and belief. Those statements are made subject to the penalties of 18 Pa.C.S. § 4909 pertaining to unsworn falsification to authorities.

DATE

5/8/2017


THEODORE WAYNE MILLER

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

Theodore Miller

CIVIL ACTION

v.

The United States of America

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ☒

5-31-17
Date

Joseph Chaiken
Attorney-at-law

Plaintiff
Attorney for

215-564-1800

Telephone

215-564-5524

FAX Number

jchaiken@jchaikenlaw.com

E-Mail Address

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 2001 Kinsey St., Philadelphia, PA 19124

Address of Defendant: 120 Le Brun Road, Buffalo, NY 14215

Place of Accident, Incident or Transaction: 3900 Woodland Ave., Philadelphia, PA 19104
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases
(Please specify) Tort Claims Act

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases

(Please specify) _____

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Joseph Chaiken, counsel of record do hereby certify:

☒ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

☐ Relief other than monetary damages is sought

DATE: 5-31-17

Attorney-at-Law

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

31187

Attorney I.D.#

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 5-31-17

Attorney-at-Law

31187

Attorney I.D.#

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

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(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

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Yes ☐ No ☒
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3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
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7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases
(Please specify) Tort Claims Act

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases

(Please specify) _____

ARBITRATION CERTIFICATION

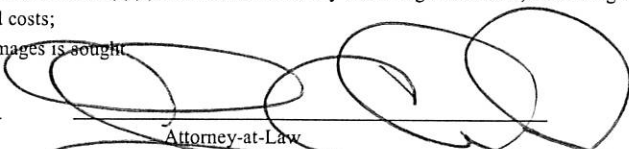
(Check Appropriate Category)

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☐ Relief other than monetary damages is sought

DATE: 5-31-17



Attorney-at-Law

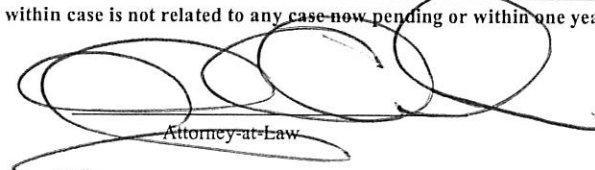
31187

Attorney I.D.#

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31187

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